

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of KENNETH E. LEGG and PEACE CORPS,  
OFFICE OF HEALTH SERVICES, Washington, D.C.

*Docket No. 97-1256; Submitted on the Record;  
Issued December 14, 1998*

---

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for hearing on February 21, 1996; and (2) whether the Office abused its discretion by denying merit review of the claim on January 27, 1997.

This case has previously been before the Board. By decision dated July 14, 1995, the Board found that appellant had not established that his disability commencing April 18, 1990 was causally related to his accepted employment injuries. The Board noted that the Office had accepted on October 31, 1991 that appellant sustained several conditions including malaria, bronchitis and asbestosis during his period of service in the Peace Corps, all of which were temporary in nature and had resolved by the time he finished his enrollment. Appellant thereafter filed a claim on January 24, 1992 alleging that his disability commencing April 18, 1990 was due to his accepted conditions, as well as due to asbestosis and airways disease which he felt were caused or aggravated by his duties as a Peace Corps volunteer. The Board found that none of the medical evidence submitted by appellant contained a rationalized opinion as to whether the diagnosed conditions of asbestosis and airways disease were related to appellant's Peace Corps work or to the conditions previously accepted by the Office. The Board, therefore, concluded that appellant had not met his burden of proof in this case to establish that he was entitled to benefits after April 18, 1990. The facts of the case are fully set forth in the prior decision and are hereby incorporated by reference.<sup>1</sup>

Following the issuance of the Board's July 14, 1995 decision, appellant advised the Office that he disagreed with the Board's decision and ultimately requested a hearing before an Office hearing representative. In its decision dated February 21, 1996, the Office's Branch of Hearings and Review denied appellant's hearing request finding that the Board had issued a decision on the issue to be resolved; that the decisions of the Board were final and were

---

<sup>1</sup> Docket No. 94-471 (issued July 14, 1995).

nonreviewable by the Office; and that, the issue in the case could equally well be addressed by requesting reconsideration from the Office.

The Board has duly reviewed the case record and finds that the Office did not abuse its discretion in this case in denying appellant's request for hearing.

Section 8149 of the Federal Employees' Compensation Act<sup>2</sup> provides that decisions of the Board on appeals taken from claims of employees are final. The Office, therefore, does not have jurisdiction to review decisions by the Board.<sup>3</sup> The Office nevertheless exercised its discretion and, thereafter, informed appellant that the issue presented could equally well be addressed by a request for reconsideration. The Board finds that the Office did not abuse its discretion in denying appellant's request for hearing.

On March 29, 1996 appellant requested that the Office reconsider his case. In his letter, appellant alleged that his claim had been previously accepted for malaria, pharyngitis, bronchitis and asbestosis. Appellant stated that his physicians had indicated that his asbestosis and bronchial airway diseases were progressive and irreversible. He stated that he would "drop" his claim for asbestosis, but continue his claim for bronchitis/airway disease. Appellant also noted that he may need heart surgery in the future and could not build up an adequate reserve of his own blood. He did not submit any new medical evidence in support of his request for reconsideration.

By decision dated January 27, 1997, the Office denied appellant's application for review. The Office found that because appellant's request for reconsideration neither raised substantive legal questions nor included new and relevant evidence, it was insufficient to warrant a review of the prior decision.

The Board also finds that the Office did not abuse its discretion by denying appellant's application for review.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations<sup>4</sup> provides that a claimant may obtain review of the merits of his or her claim under 5 U.S.C. § 8128(a) by written request to the Office identifying the decision and the specific issues within the decision, which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that any application for review of the merits of the claim, which does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.

---

<sup>2</sup> 5 U.S.C. § 8149.

<sup>3</sup> See *Albert Zerega*, 45 ECAB 860 (1994).

<sup>4</sup> 20 C.F.R. § 10.138(b)(1).

In his letter to the Office dated March 29, 1996, appellant reiterated that his claim had been accepted for several conditions and that his new conditions of asbestosis and bronchial airway disease were progressive and irreversible. Appellant also commented regarding the possibility of future heart surgery. His compensation benefits had been previously denied following April 18, 1990 because the medical evidence did not contain the rationalized medical evidence necessary to establish that appellant's medical conditions were causally related to his Peace Corps work and disabled appellant after such date. Appellant's general statements regarding his medical conditions did not show in any way that the Office had erroneously applied or interpreted a point of law and did not advance a point of law or fact relevant to his claim, which had not been previously considered by the Office. Furthermore, appellant did not submit any new and relevant evidence to correct the deficiency in his claim. That is appellant did not submit the necessary rationalized medical evidence to establish that his conditions of asbestosis and bronchial airways disease were causally related to his work as a Peace Corps volunteer and caused disability after April 18, 1990.

As appellant did not submit the necessary evidence to require merit review, the Office did not abuse its discretion in this case.

The decisions of the Office of Workers' Compensation Programs dated January 27, 1997 and February 21, 1996 are hereby affirmed.

Dated, Washington, D.C.  
December 14, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member